

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

CELSIUS NETWORK LLC, *et al.*¹

Debtors.

Case No. 22-10964 (MG)

Chapter 11
(Jointly Administered)

**RESERVATION OF RIGHTS OF THE U.S. SECURITIES AND
EXCHANGE COMMISSION TO DEBTORS' MOTION FOR ENTRY OF AN
ORDER APPROVING DISCLOSURE STATEMENT AND RELATED RELIEF**

The U.S. Securities and Exchange Commission ("SEC") files this reservation of rights with respect to the Debtors' *Motion For Entry Of An Order (I) Approving the Adequacy of the Debtors' Disclosure Statement, (II) Approving The Solicitation And Voting Procedures With Respect To Confirmation Of The Debtors' Joint Plan of Reorganization, (III) Approving The Form Of Ballots And Notices In Connection Therewith, (IV) Scheduling Certain Dates With Respect Thereto, (V) Authorizing And Approving Reimbursement Of Certain Of The Plan*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); Celsius US Holding LLC (7956); GK8 Ltd. (1209); GK8 UK Limited (0893); and GK8 USA LLC (9450). The location of Debtor Celsius Network LLC's principal place of business and the Debtors' service address in these chapter 11 cases is 50 Harrison Street, Suite 209F, Hoboken, New Jersey 07030.

Sponsor's Fees and Expenses, And (VI) Granting Related Relief (the “**Disclosure Statement Motion**”) [Docket No. 2970].²

BACKGROUND

1. The SEC is the federal agency responsible for regulating the U.S. securities markets, protecting investors, and enforcing the federal securities laws. On July 13, 2023, the SEC filed a complaint against Debtor Celsius Network Limited and its former CEO, Alexander Mashinsky in the U.S. District Court for the Southern District of New York, Case No. 1:23-cv-06005, alleging that the defendants raised billions of dollars from investors through the unregistered and fraudulent sales of crypto asset securities.³

2. On June 15, 2023, the Debtors filed the Joint Chapter 11 Plan of Celsius Network LLC and Its Debtors Affiliates [Docket No. 2807] (as amended, the “**Plan**”).

3. On June 27, 2023, the Debtors filed the Disclosure Statement [Docket No. 2902] (as amended, the “**Disclosure Statement**”) for the Plan.

4. The Plan defines Illiquid Recovery Rights as “in the event of an Orderly Wind Down, the Claims of any creditor that would have received NewCo Common Stock had the NewCo Transaction been consummated, which Claims shall remain outstanding after the

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Disclosure Statement Motion.

³ At a hearing held on June 28, 2023, this Court invited regulators to weigh in on whether the CEL token is or is not a security. The SEC’s complaint in the District Court action alleges, among other things, that the Defendants “fraudulently manipulated the price of Celsius’s own crypto asset security—the so-called ‘CEL’ token.” *SEC v. Celsius Network Ltd.*, No. 1:23-cv-06005 (Bankr. S.D.N.Y.). Objectors have cited to the recent decision in *SEC v. Ripple Labs Inc.*, to support their position that CEL tokens are not securities. No. 1:20-cv-10832 AT, 2023 WL 4507900 (S.D.N.Y. July 13, 2023). The SEC respectfully avers that certain portions of *Ripple* conflict with decades of longstanding law. *SEC’s Resp. to Supp. Auth. in Support of Defs.’ Mot. to Dismiss, SEC v. Terraform Labs Pte. Ltd.*, No. 1:23-cv-01346 JSR (July 21, 2023) [ECF No. 49]. In *SEC v. Terraform Labs Pte. Ltd.*, issued on July 31, 2023, Judge Rakoff rejected the portion of *Ripple* relied upon by objectors, found that the SEC alleged facts sufficient to claim that the defendants’ crypto assets are securities, and declined to draw a distinction between tokens based on their manner of sale. No. 1:23-cv-01346 JSR, 2023 WL 4858299, *15 (S.D.N.Y. July 31, 2023).

Effective Date for purposes of preserving such Holders' rights to recoveries on the Debtors' illiquid assets, which may be (but are not required to be) tokenized." Plan, at 11.

5. The Plan further provides that if the Debtors elect to pursue an Orderly Wind Down, the Debtors will file a Wind Down Motion and provide parties in interest with 10 days to object. Plan, at 44.

RESERVATION OF RIGHTS

6. The SEC staff has communicated its concerns about the possible tokenization of Illiquid Recovery Rights to Debtors' counsel, who have cooperated with the staff in addressing other concerns regarding the Disclosure Statement and Plan. The SEC reserves the right to object to confirmation of the Plan or to any Wind Down Motion filed in these cases, including the issuance of any "tokenized" Illiquid Recovery Rights or on any other bases. The SEC is not opining as to the legality, under the federal securities laws, of the transactions outlined in the Plan, and reserves its rights to challenge transactions involving crypto assets.

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Dated: Washington, DC
August 3, 2023

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION

By: /s/ Therese A. Scheuer

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of August, 2023, a true and correct copy of the foregoing Reservation of Rights was furnished to all ECF Participants via the CM/ECF system.

/s/ Therese A. Scheuer

Therese A. Scheuer (admitted *pro hac vice*)